

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF THE CITY OF LINCOLN, NEBRASKA

These Comments are filed by the City of Lincoln, Nebraska, in support of the comments filed by the National Association of Telecommunications Officers and Advisors (“NATOA”). Like NATOA, the City of Lincoln believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Lincoln, Nebraska is a city with a population of approximately 225,000. Our franchised cable provider is Time Warner Entertainment-Advance/Newhouse Partnership. Our community has negotiated cable franchises since 1967.

Our Current Franchise

Our current franchise just began in December of 2005 and expires in 2020. Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5% of the cable operator’s revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental (“PEG”) access channels on the cable system. We currently have two channels devoted to public access; one channel devoted to educational access; and one channel devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: First, the operator provides \$.41 per sub per month for the support of

government and educational access; and second, the operator has provided a commitment of \$600,000 for the capital needs of public access.

Our franchise also contains institutional network (“I-Net”) requirements. The cable operator has provided a \$750,000 grant for the expansion of our current I-Net. We use our I-Net facilities for all of our government data purposes: communication between departments, data transfers, traffic control, etc

Our franchise contains the following requirements regarding emergency alerts: The cable operator is to provide the city with an ability to override the system signal to provide local alerts. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. Our area has recently had a series of tornadoes in the surrounding communities. The warnings those communities received from the local alerts truly saved lives. This capability is viewed as critical.

Our franchise contains the federal customer service standards. However, we retain an ability to annually review the cable operator’s performance and can make any changes that may be dictated by such review.

Our franchise contains a “most-favored-nations” provision which states the following: In the event another franchise agreement is granted on terms more favorable or less burdensome than those imposed in this agreement, then Grantee shall have the benefit of those more favorable terms.

Our franchise contains the following insurance and surety requirements: Commercial General Liability, Five Million Dollars (\$5,000,000); Automobile Liability, Two Million Dollars (\$2,000,000); Employer’s Liability, Two Million Dollars (\$2,000,000). We have also required a \$100,000 Letter of Credit ensuring performance of the agreement in lieu of a performance bond.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. The right-of-way permit requirement is the same for all those who conduct construction therein.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: the previously mentioned Letter of Credit is provided to ensure compliance with all provisions of the agreement.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act, it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process -- to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: First, the agreement specifically provides that in the areas of police powers, the city retains any and all abilities to unilaterally make changes as the city sees fit; and secondly, the agreement provides for changes to be incorporated as federal and state law changes. If those changes cause a significant part of the franchise to become void, the parties have agreed they will make a good faith effort to negotiate a replacement provision.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance, the city has agreed that we will undertake specific consultations with the cable operator before any adverse decisions involving the Letter of Credit take place.

Competitive Cable Systems

Our community was approached at least twice in the last four years by potential competitors and we had various conversations about coming to Lincoln, but the providers chose not to enter into any formal discussions. Those conversations involved eliminating various provisions in the franchise that we were operating under and also involved the business acumen of the current cable operator. The city has actively sought out competitive providers, but has not been successful. We have mechanisms in place to offer the same or a comparable franchise to any competitor upon request.

Conclusions

The local cable franchising process is one in which the City of Lincoln is well versed. We have recently conducted several needs assessments in the communities. We have finished negotiating a new cable franchise which will serve as the template for future providers. As the above information indicates, we are experienced at working with cable providers to both see that

the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights-of-way in a fair and evenhanded manner, that other users of the rights-of-way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users. We are very concerned that if our franchising ability were eliminated, it would spell the end for public and educational access in Lincoln. It is only through the franchising process that we are able to provide and require the necessary support for those users.

The City of Lincoln therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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